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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/565,094

01/17/2007

Jeffrey Blyth

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EXAMINER

CALLAWAY, JADE R

ART UNIT

PAPER NUMBER

2872

MAIL DATE

DELIVERY MODE

07/18/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/565,094	Applicant(s) BLYTH ET AL.	
	Examiner JADE CALLAWAY	Art Unit 2872	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/17/06, 1/16/07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/16/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The preliminary amendments to the specification and the claims, in the submission dated 1/17/06, are acknowledged and accepted.

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

3. The drawings were received on 1/17/06. These drawings are acceptable.

Specification

4. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

5. The abstract of the disclosure is objected to because the length does not fall in to the recommended ranges of 50 to 150 words. Correction is required. See MPEP § 608.01(b).
6. Abstract, line 2, delete "comprises"

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 5-7 and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Lowe et al. (5,989,923) of record.

Consider claim 1, Lowe et al. teach (e.g. figure 1a) a sensor (9, sensor) comprising a medium (10, support medium) and, disposed therein, a hologram (17, hologram) wherein an optical characteristic of the hologram changes as a result of a variation of a physical property of the medium, and wherein the hologram is formed as a non-planar mirror (reflection hologram with fringes that can be flat or curved) [col. 4, lines 32-39, col. 10, lines 4-39].

Consider claim 5-7, Lowe et al. teach (e.g. figure 1a) a method for the production of a sensor (9, sensor) comprising a medium (10, support medium) and, disposed therein, a hologram (17, hologram), wherein an optical characteristic of the hologram changes as a result of a variation of a physical property of the medium, and wherein the hologram is formed as a non-planar mirror (reflection hologram with fringes that can be flat or curved); wherein the method comprises forming, in a non-planar medium (can be flat or curved), a hologram, as a non-planar mirror (reflection hologram with fringes that can be flat or curved), that is recorded using a planar mirror [col. 4, lines 32-39, col. 10, lines 4-39].

Consider claim 14, Lowe et al. teach (e.g. figure 1a) a method for the detection of an analyte, which comprises remotely interrogating, with light, the holographic element of a sensor (9, sensor) comprising a medium (10, support medium) and, disposed therein, a hologram (17, hologram), wherein an optical characteristic of the hologram changes as a result of a variation of a physical property of the medium, and wherein the hologram is formed as a non-planar mirror (reflection hologram with fringes that can be flat or curved); wherein the method further comprises detecting any change in an optical characteristic of the sensor [col. 4, lines 32-39, col. 10, lines 4-39].

Consider claim 15, Lowe et al. teach (e.g. figure 1a) a method wherein the light source is collimated (12, laser light rays from a laser source) [col. 10, lines 4-14].

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2-3 and 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lowe et al. (5,989,923) in view of Mizutani et al. (6,483,611) of record.

Consider claims 2-3 and 8-9, Lowe et al. do not disclose a sensor wherein the hologram is formed as a concave or convex mirror. Lowe et al. and Mizutani et al. are related as devices utilizing holograms. Mizutani et al. teach (e.g. figure 1-2) a sensor wherein the hologram is formed as a concave or convex mirror using a concave mirror [col. 1, lines 59-67, col. 2, lines 7-9, 65-68, col. 3, lines 1-11 and col. 15, lines 26-53]. It

would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the device of Lowe et al., as taught by Mizutani et al., in order to allow for magnification or reduction of an image formed from the hologram element.

Consider claim 10, the modified Lowe et al. reference discloses a method wherein the hologram is recorded using a mirror capable of effecting retroreflection [col. 1, lines 59-67, col. 2, lines 7-9, 65-68, col. 3, lines 1-11 and col. 15, lines 26-53 of Mizutani et al.]. Note that a retroreflector is defined as a device that reflects light back to its source. As such, the mirrors of Mizutani et al. will function as retroreflectors.

Consider claim 11, the modified Lowe et al. reference does not disclose that the hologram is recorded using a corner cube prism. Note that the Court has held that a mere change in shape of an element is generally recognized as being within the level of ordinary skill in the art when the change in shape is not significant to the function of the combination, see **In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)**. Further, one would have been motivated to have the hologram recorded using a corner cube prism in order to reduce scattering of light during reflection.

Consider claim 12, the modified Lowe et al. reference does not disclose that the hologram is recorded using reflective beads. Note that the Court has held that a mere change in shape of an element is generally recognized as being within the level of ordinary skill in the art when the change in shape is not significant to the function of the combination, see **In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)**. Further, one would have been motivated to have the hologram recorded using reflective beads in order to reduce scattering of light during reflection and increase reflective capabilities.

Consider claim 13, the modified Lowe et al. reference discloses (e.g. figure 2 of Mizutani et al.) a method wherein the hologram is recorded using a lens (542, object lens) placed between the light source and the medium [col. 2, lines 19-35 of Mizutani et al.].

11. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lowe et al. (5,989,923).

Consider claim 4, Lowe et al. do not disclose that the hologram is formed as a corner cube prism. Note that the Court has held that a mere change in shape of an element is generally recognized as being within the level of ordinary skill in the art when the change in shape is not significant to the function of the combination, see **In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)**. Further, one would have been motivated to have the hologram is formed as a corner cube prism in order to reduce scattering of light during reflection

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Popovich et al. (6,353,489) disclose an optical retro-reflection device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JADE CALLAWAY whose telephone number is (571)272-8199. The examiner can normally be reached on Monday to Friday 7:00 am - 4:30 pm est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephone B. Allen can be reached on 571-272-2434. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JRC
/Jade R. Callaway/
Examiner, Art Unit 2872

/Arnel C. Lavarias/
Primary Examiner, Art Unit 2872